

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
SEPTEMBER 7, 2021**

**CALL TO ORDER
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Donna Valade and Erick Mack represented the Flathead County Planning & Zoning Office.

There were 25 members of the public in attendance at the meeting and multiple members of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:00 PM**

Klempel motioned, seconded by Liechti, to approve the August 03, 2021 minutes as written.

The motion passed unanimously on a roll call vote. Dyck abstained as he was not at the previous meeting.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A.)
6:01 PM**

None

**BOARD DISCLOSURE
OF ANY CONFLICT OF
INTERESTS
6:01 PM**

None

**PRACHT AND
BREYMEIER
(FZV-21-06)
6:01 PM**

A request from David Pracht and Nancy Breymeier for a variance to Section 3.16.040(3)(A) of the Flathead County Zoning Regulations (FCZR), to encroach in the front setback for the single-family dwelling. The subject property is zoned RC-1 (Residential Cluster) and is located at 179 Aerie Place, Bigfork, MT within the Bigfork Zoning District. The property contains approximately 0.451 acres.

**STAFF REPORT
6:02 PM**

Donna Valade reviewed the Staff Report FZV-21-06 for the board.

BOARD QUESTIONS
6:04 PM

Dyck asked where the easement for the watermain was. Valade said BLUAC had the same concern and the applicant would be working with Bigfork Water and Sewer on the easements so that they could continue to proceed.

Noble asked for clarification on setbacks and the proposed setback. Valade explained they were proposing to use the road for the setback and not the property line, as observed by the Planning and Zoning office. They discussed road easements in great detail.

Dyck asked for clarification on the setbacks of the driveway. They discussed this in detail.

Netteberg asked if the square footage of the house was 3,500. Staff replied that was correct, although there was some discrepancy which the applicant could address.

Dyck questioned if the the roof and/or the overhang was a part of the side setback. They discussed this further.

Liechti preferred the applicant would have recognized the setback from the property line instead of the edge of the road. It made it unclear and he noted that a road could move easier than a property line. He felt the road was arbitrary. Valade agreed and said that was why she had written the staff report in observation from the property line.

**APPLICANT
PRESENTATION**
6:08 PM

David Pracht and Nancy Breymer, 311 Lake Hills Dr., were the applicants. Pracht summarized the application and why their property was unique. He discussed how they had done their due diligence in talking with the H.O.A., Bigfork Water and Sewer, and excavators to see what they could do on the property prior to building. He discussed, at great length, the process they had been through and the reasons behind their request for the variance. They were trying to work around their house plans and the topography of the land.

BOARD QUESTIONS
6:19 PM

Dyck questioned the 10' water/sewer easement and stated it should be for water only. Pracht clarified it stated it was a utility on the map. He pointed out where the water and sewer were located. They had worked with Bigfork Water and Sewer to understand where the access points were.

Klempel asked when the property was surveyed. The original had been done in 1986. Pracht explained he had spoken to a member of the H.O.A. and was told there would be no issues with county acknowledging the setbacks from the road and not the property line. He said they were not asking for forgiveness but were trying to be above-board.

Liechti asked if there was a minimum home size requirement and Pracht replied 1,800 sq ft.

(An unidentified member of the public commented but was inaudible.)

**AGENCY COMMENTS
COMMENT
6:23 PM**

No public agencies were present to comment. Written comments were reviewed in the staff report.

**PUBLIC COMMENT
6:23 PM**

Patrick Conover, 600 Hogue Dr., spoke in support of the application. He was a part of the Eagle Bend Architect Committee and the H.O.A. had looked into this request. They had come to the conclusion that they did not have any objection to granting this variance. The house did not loom over the road or adjoining property owners. Because of the odd shape of the lot and topography, it was difficult to put in a home on it. They felt the applicant had been diligent with what he was trying to accomplish in order to build his home.

Liechti thanked Conover for attending the meeting. Liechti asked that he address the fact that the applicants had received misleading information from the architect committee regarding setbacks. Liechti asked that the architect committee refer to Conover for all setback questions from this point forward because it appeared as though he knew what he was talking about. Conover said that the person that had spoken with the applicant had been head over the architect committee but since retired.

Klempel asked Conover if they looked at the COS before giving homeowners direction. Conover said direction given was dictated by the policies written the homeowners association, covenants, and the zoning regulations. Conover said they ask for preliminary plans to review as a committee.

Dyck thanked him for coming and said this process was so much better than what had been done in the past.

Mark Stelling with MMW Architects, 125 West Alder Street, spoke in support of the application. He was the architect for the project and discussed the process they had gone through in working with the topography and setbacks. They wanted to have good views from the east and west. He discussed the complications and had designed the house to have a low profile. He strongly believed that it did not impact the adjacent properties.

**BOARD DISCUSSION
6:31 PM**

Liechti discussed the precedence that had been set in Eagle Bend. He felt the applicant and representatives had done the best to minimize the impact and still have a house that would fit the lot.

Klempel felt they could massage the finding of facts. She appreciated that it was not an after-the-fact request. She felt that something needed to be done in the whole district because it was a mess.

Netteberg said all the lots that were flat and level were gone. He felt the BOA's job was to do everything possible to help them fit it in there. Netteberg felt this was common sense.

Noble was on the fence for a couple of reasons. He looked at the footprints of adjacent houses, which proved that there could be smaller houses in the area. The road issue gave him heartburn. He felt the house could be rotated too and still be within the setbacks. Between those two things and the regulations, he was on the fence.

Dyck said that one of the issues with Eagle Bend was that it was developed in 1986 but put under regulations in 1993 and therefore the footprint for the lots could become unbuildable. He was also concerned about easements that ran through a portion of a lot, which made it unbuildable. There had to be flexibility. He discussed this in detail.

The board went through the criteria one by one and discussed what findings they would change in detail.

STAFF REBUTTAL
6:39 PM

Valade interjected that it was platted in 1986 and a subdivision that would be platted now would require a 60' easement. This already had a 20' larger lot than what it could have now. The applicants had done their due diligence by looking at the property. All the information was out there. They could have contacted Bigfork Water and Sewer to find out where the easements were prior to purchasing the property. They knew there was an irregular shaped front property line, which was obvious and on the plat. They were also aware that the road was in the easement, which also happens in other cases in Flathead County as well. One of the key parts missing was that they did not call the planning office. In cases where CCandRs and H.O.A.'s are there, zoning still trumped covenants which were a civil matter. Violations were not based on covenants nor H.O.A.'s, they were based on zoning regulations. She discussed the fact that there were neighboring adjacent property owners that had smaller house footprints [that what was proposed]. A couple of the larger homes had been built on multiple tracts. She wanted to offer up that information for the board to consider; there was more they could have done.

BOARD DISCUSSION
6:42 PM

Liechti agreed with Valade and said her points should be addressed later in the hearing.

Liechti continued to go through the Findings of Facts and his suggested amendments along with noting which ones he had a hard time changing.

Klempel said she had a hard time trying to make all 9 findings of facts fit the criteria.

Noble understood Netteberg's approach. He was glad the applicants had come in before it was built and they could have the opportunity to discuss it. He had been frustrated with people who came in after-the -fact and the applications were denied. Noble kept coming back to the idea that they could tweak it to make it work but wasn't sure he could quite get there.

Netteberg was done with his thoughts and was in agreement with Liechti.

Dyck understood that some of the Findings of Facts could be adjusted but others could not. The board continued to discuss this at length.

Dyck asked if they wanted to call for a vote.

Valade found there to be 4 positive and 5 negatives Findings of Facts.

Dyck said he could not see how they could fulfill the other 5 [negative findings].

Liechti recalled they had granted variances in the past that he felt were quite similar to this. The board had either adjusted the findings to make them positive or simply voted to approve the variance.

Dyck discussed situations where they had given variances in the past. Dyck said that this property, with the sewer coming through the front tip of the lot, did not really impact the structure. The main concern was the 9' easement. He agreed with Noble that they could move the 9' and it would not be severe. They were still away from the red zone. The only thing it was going to do was shrink the yard. He discussed different options the applicant may have to make it work. If there were unforeseen circumstances or they had owned the lot prior to zoning, then he was open to variances. He discussed previous files that had been approved. This one he believed could be adjusted and still fit the lot.

Noble said if the applicants were just talking about the deck, he would be ok with it but there was more than that. There was still 9' of an allowable buffer. He understood that people wanted to have their views but he was afraid that it would set a precedent. There had never been a case where they had approved it without having all 9 positive finding of facts

Noble made a motion, seconded by Klempel, to accept Staff Report FZV-21-06 as Findings-of-Fact.

**MAIN MOTION TO
ADOPT F.O.F.
(FZV-21-06)
6:54 PM**

**ROLL CALL TO ADOPT
F.O.F.
(FZV-21-06)
6:54 PM**

Motion passed on a 3-2 roll call vote. Liechti and Netteberg dissented.

**MOTION TO DENY
(FZV-21-06)
6:55 PM**

Noble made a motion, seconded by Klempel, to deny FZV-21-06.

**ROLL CALL TO DENY
(FZV-21-06)
6:55 PM**

Motion passed on a 4-1 roll call vote. Netteberg dissented.

**CID, LLC
(APPEAL-21-02)
6:57 PM**

An appeal by CID, LLC, with technical assistance from Jane Cowley, regarding the Zoning Administrator approval of an Administrative Conditional Use Permit (FACU-21-22) on June 1, 2021, for short-term rental housing. The property is located at 10 Bear Dance Village, Bigfork, MT within the Bigfork Zoning District. The property is zoned RA-1 (Residential Apartment).

**STAFF REPORT
6:58 PM**

Erick Mack reviewed the Staff Report APPEAL-21-02 for the board.

**BOARD QUESTIONS
7:03 PM**

Noble asked about the declaration needing a legal opinion. Mack explained that the appellants were saying that the documents were not legally binding. That was not something the county wanted to get in to. The decision was based on what was given to staff as the recorded document from the applicant. It was not for staff to decide whether the document was legally binding.

Dyck asked if they needed to have resolution on the issue before moving forward. Liechti reiterated that the covenants were a civil issue and would not impact the county's decision regarding zoning regulations. He felt they could move forward, looking at it from a county regulation perspective. Noble concurred.

**APPELLANT
PRESENTATION
7:04 PM**

Jane Cowley with Laird Cowley, PLLC, 2315 McDonald Ave, Suite 220, was the attorney assisting the appellant through the process. She said the issue regarding the second amendment covenants were an issue in the matter but not an issue for the BOA to weigh in on or make determinations regarding the enforceability of the terms. It was just useful information to have in this matter. She said the issue was that, when a conditional use permit was granted, it should be granted in a way that managed the impact on a neighboring property. The permit actually provided the ability for the applicants to rent property that they

did not own in whole but only partially. It involved common areas and which was listed as available for vacation renters to enjoy. Those common areas were not being offered by the mutual consent of all the home owners. That was the issue that they requested the Board hear and make a decision on; whether or not this conditional use permit could move forward without negatively impacting adjoining owners who had an undivided shared ownership in the common areas and that were non-consenting to the rentals of said common area.

Carolyn Diddel, *address unknown*, joined via Zoom and identified herself as the appellant and the first owner in the subdivision, which she noted had been sold as a gated community. She expressed her frustration over having people enjoy the amenities that the owners paid dues for and felt it went against the atmosphere of the gated community.

PUBLIC COMMENT
7:11 PM

Brant Beaudry, 13613 Sundance Train, represented Dan Byrnes who was an owner at Bear Dance. They had received a conditional use permit. He said there had been 0 noise complaints [since they started doing it]. His client were hypersensitive to short-term rentals and hired Whitefish Escapes to manage and closely enforce the policies. There was a thick rule book for the renters. For those reasons, he felt the permit should be upheld. He addressed the concerns of Cowley and Diddel. He said it was unheard of to restrict common areas. His hope and goal was that renters would use the area respectfully, as they have. If they were not using them respectfully, then complaints should be made, and action would be taken. This was still an exclusive and gated community, which is why Mr. Byrnes bought the property in order to have short-term rentals in a gated community.

Marlon Hughes, 25 Bear Dance, spoke in support of the appeal. He discussed the different scenarios that had forced them to make multiple complaints. It had not been trouble free. He did not know the criteria involved, but from a philosophical standpoint, he viewed the planning commission as a defender of the community. He discussed his history of living in the area and the effects of having short-term rentals in the area. He was concerned about the negative impact of short-term rentals on this micro-community. He was not a fan of feeling like he had to police the area.

Lisa Hughes, 25 Bear Dance, spoke in support of the appeal. She discussed her history of living in the area. She had bought that property from her inheritance and therefore had emotional ties to the property. She discussed this in detail along with the issues that they have had already with the property.

Jamie Johnson, 135 Bay Dr, spoke in opposition of the appeal. She had a hard time listening to the description of inappropriateness of the renters [and was in disagreement with said description]. She discussed her history of growing up in the valley and said bringing her family back during the summers was a dream come true. She discussed the CCandRs and how they allowed short-term

rentals, which was one of the reasons why they bought it. They had stayed in their home from June to July and were the only owners that were present during that time. She said all the renters they had witnessed were very pleasant and if there was ever an issue, it was quickly resolved.

APPLICANT REBUTTAL
7:26 PM

Cowley said the concern was that there had been problems that could not be mitigated and did not have the support from the majority of the property owners. The conditions that were in place were a step in the right direction but not enough to ensure the neighboring properties would not be impacted.

Diddel said it could be an AirBnB if the applicants owned all of them but it had an impact on the other owners.

STAFF REBUTTAL
7:26 PM

Mack informed them there was another application from a neighboring owner that had been turned in and was awaiting to see the verdict from this decision.

BOARD DISCUSSION
7:28 PM

Dyck asked for the definition of a condominium and discussed that owners owned the space but not a portion of the ground. It was different than a town home.

In response to the allegations of complaints against the renters, Liechti asked specifically if they had county approval to short-term rent. Mack clarified they had been issued a permit, by the County, and had been renting since June.

Dyck asked how many grievances were allowed before the conditional use permit (C.U.P.) would be revoked. Mack said it was a good question and depended on the staff. If there were repeat offenses of a specific C.U.P., then there would be violation of the C.U.P. and action would be taken. The regulations did not address how many offenses would require a permit to be revoked but that was something that could be addressed with the Planning Board. They continued to discuss this at great length.

Dyck requested they go through the staff report to see what was approved and then they could go on from there.

Klempel brought up the condition that addressed that the applicant was responsible for reviewing and adhering to all covenants, conditions, and restrictions in place or any other H.O.A. documents and asked what happened if it was not addressed in the CCandRs or H.O.A. documents. The amendment addressed short term rentals but was after the fact and were not addressed [in the original drafts]. They discussed this at length along with the MCA Title 70 that addressed H.O.A. and amendments.

Liechti acknowledged the findings in the staff report were all positive and he was not seeing anything, without getting into the philosophical approval/or denial of a STR, that they could deny [the C.U.P.] on based on current county regulations.

Noble asked if they were in conformance with condition #9 addressing the public accommodation license. Mack clarified that they had a year to fulfill all the accommodations. He said that they could ask the applicant if they had the permit. His understanding was that Whitefish Escape has gotten the necessary permits. Mack said that he recalled them making the statements that they had in place but he does not have any documents as of yet. They had done the emergency contact notification. The applicant said that they do have it.

Klempel wondered if going through the staff report was going to make a difference.

Netteberg asked if they could approve it after looking at the second amendment where declaration stated that they could have nightly rentals.

Dyck said it fit the criteria of what was required but did not fit the atmosphere of what it was designed for. Dyck said the County was going to have to clarify definitions in a lot of areas. In his personal opinion, they would have to have 100% approval of the whole community for it to happen. His concern was that somebody had to police the area, and therefore, it would have an impact on the neighbors. He felt it was just the tip of the iceberg. The county had to come up with a better way to revoke C.U.P.S in the case of multiple violations. He understood short-term rentals were defined residential but owners were creating revenue and he considered it commercial. He felt short-term rentals had their place but not in a condominium, townhouse, and/or duplex because of the shared common spaces. He was not happy about it and felt the county needed to establish rules and felt it should be zoned in such a way. He considered it a motel/resort concept and should not be allowed everywhere.

Netteberg agreed.

Dyck expressed that it was a frustrating situation as a board. The director had done what he was supposed to according to the rules. His felt there was a big problem, which needed to be address quickly, or everyone was going to end up in a lawsuit. He viewed it as a tremendous problem. According to the criteria before him tonight, he had to uphold the C.U.P. but they could not solve the problem tonight. Somewhere, someone had to redefine it.

Klempel said that The Commissioners would have to address the legislation.

Netteberg said if was a contained area, the CCandRs should take care of that. He liked the three-strike rule. They discussed possible ways to set rules and

guidelines.

**MOTION TO DENY
(APPEAL-21-02)**

7:46 PM

Liechti made a motion, seconded by Dyck, to deny APPEAL 21-02.

**ROLL CALL TO DENY
(APPEAL-21-02)**

7:47 PM

Motion passed unanimously on a roll call vote.

**CID, LLC
(APPEAL-21-03)**

7:47 PM

An appeal by CID, LLC, with technical assistance from Jane Cowley, regarding the Zoning Administrator approval of an Administrative Conditional Use Permit (FACU-21-23) on June 1, 2021, for short-term rental housing. The property is located at 55 Bear Dance Village, Bigfork, MT within the Bigfork Zoning District. The property is zoned RA-1 (Residential Apartment).

STAFF REPORT

7:48 PM

Erik Mack reviewed Staff Report Appeal 21-03.

BOARD QUESTIONS

7:49 PM

None

**APPELLANT
PRESENTATION**

7:49 PM

Jane Cowley with Laird Cowley, PLLC, 2315 McDonald Ave, Suite 220, was the attorney assisting the appellant through the process. She respectfully disagreed that they were bound to accept the conditions under the criteria. She believed the board still had the authority to review the impact on the neighboring property owners, and with that authority, determine that the C.U.P. was not actually meeting the necessary criteria. She understood that they were looking at that in a different way but she urged them to look closely at what they could do to protect the integrity and intent of the community.

Carolyn Diddel, who had joined over Zoom, agreed with Crowley. She felt a decision could be reached. She did not feel it was a conducive area, because of the circular shared space, they were all impacted.

AGENCY COMMENTS
COMMENT
7:49 PM

No public agencies were present to comment. Written comments were reviewed in the staff report.

PUBLIC COMMENT
7:51 PM

Brant Beaudry, 13613 Sundance Train, was the legal counsel representing Dan Byrnes. He said the covenants and the bylaws were setup to govern the conflicts between the home owners. The H.O.A. had the power and authority to make the decision. The BOA did not have the power to enforcement them. The Planning Department had approved that C.U.P. and they supported that. He said anybody within a condominium development would have conflict at some point and time but he encouraged the board not to take away power from the H.O.A. to enforce.

Lisa Hughes, 25 Bear Dance, spoke in support of the appeal and agreed that it should be 100% of a decision amongst the community and not a couple of owners who came from out of state. She was concerned about the negative impact. She said Whitefish Escapes did not report their complaints that they had filed.

Dan Byrne, 135 Big Dr. Dr., spoke in opposition of the appeal. He was the owner of the property in question. He had been elected as H.O.A. president and had worked very hard for and in support of the Bear Dance Village Condos. He was the one in charge of maintenance for the condominiums and was making sure that it was getting done. He had gone to the board meeting to address the issues that the community would have. They had come up with agreements regarding parking. He discussed the context of what had happened with the boat issue. He said there was nobody working harder at Bear Dance to make it a great community.

APPELLANT REBUTTAL
7:57 PM

Cowley asked they take notice of the prior comments that had been made earlier regarding the change of atmosphere and the negative impact it had on the landowners of this community.

BOARD DISCUSSION
7:58 PM

Noble wanted the Hughes to know that they were listening. One of the items for the approval was that there would not be a significant negative impact and he discussed how the board took the concerns to heart. He felt the issues brought up sounded more like a H.O.A. concern rather than a concern of the C.U.P. process. He wanted them to know that they were listening to them but it went beyond their approval process. They had to decide how the appeal was relative to the administrative approval.

Klempel said they could not put conditions on H.O.A. documentation. It was a civil matter and the H.O.A. could pursue that. They would have to go back and redraft their declaration. The B.O.A. did not have the authority to do that.

Dyck recommended that if Whitefish Escapes had not addressed the concerns, they document everything and inform the Planning and Zoning Department. He said. He explained what was within the BOA's jurisdiction and that they had 9 criteria look at. It fit within the criteria, whether he liked it or not, they had to work with that.

**MOTION TO DENY
(APPEAL 21-03)
8:02 PM**

Noble made a motion, seconded by Klempel, to deny APPEAL 21-03.

**ROLL CALL TO DENY
(APPEAL 21-03)
8:02 PM**

Motion passed unanimously on a roll call vote.

**WICK
(APPEAL 21-04)
8:05 PM**

An appeal by Dale & Elaine Wick et al, with technical assistance from Donald R. Murray, attorney, Hash, O'Brien, Biby & Murray, PLLP, regarding the Zoning Administrator approval of an Administrative Conditional Use Permit (FACU-21-27) on June 7, 2021, for short-term rental housing. The property is located at 43 Larchwood Lane, Lakeside, MT within the Lakeside Boulevard North Zoning District. The property is zoned R-2 (one family Limited Residential) and SC (Scenic Corridor).

**STAFF REPORT
8:12 PM**

Erik Mack reviewed the Staff Report APPEAL 21-04 for the board.

**BOARD QUESTIONS
8:13 PM**

None

**APPELLANT
PRESENTATION
8:15 PM**

Donald Murray, with Hash, O'Brien, Biby & Murray, PLLP, 136 1st Ave W., was the attorney who represented the appellants and the people within the neighborhood. He wasn't going to say much about the regulations but said that Conditional Use Permits (C.U.P.) were *always* the BOA's decision. It did not matter if they came to the board as conditional or conditional administrative use permits. He also said a C.U.P. was never a right but a privilege. It was something that was not allowed within the zone without a conditional use and an applicant was not entitled to that without the burden of proof that there would be no detriment to the neighborhood. If they could not show that [to the Board's

satisfaction] then they had to deny it. He explained the property was a duplex which was owned by two owners; the Fox and the Wicks. Everything else was common area. The renters were there to have a vacation and this place had a small lakefront patio that was to be shared. Even if they were well behaved, the renters would share that space and therefore the owners could not use it. It was not the renter's fault however that was the reality of the situation. He said they had been robbed of the use of their own property. The site was not suitable for short-term rentals. It was obvious that short-term rentals were here to stay but this area was not suitable due to the common areas and shared space. The practicality of the matter was that they could not use their own property. The staff had gone through the criteria but did not have time to look at the properties individually and what the practical impacts of the neighborhood would be. The fact that it was half owned by the Wicks, and they had not consented to this, was what had distinguished this property from others.

Dale Wick, 41 Larchwood Ln, was the appellant. He described a disheartening summer because of the negative impact the VRBO had on them. He discussed his history of living in the area and how they came to obtain the property. He felt that the quietness and safety of the neighborhood was in duress this summer and described his experience and what he had witnessed in great detail.

Elaine Wick, 43 Larchwood Ln, was also an appellant. She spoke in great detail of her experience with the renters from the short-term rentals. She read from a letter that she had prepared expressing her frustration with the situation while being an adjoining neighbor to the property.

Patti Connors, 55 Larchwood Lane, was one of the appellants. She discussed the process of approval and the disapproval of the process. She discussed in detail the problems that they had this summer. She felt there was no regard for personal property. She did not feel it was a good property for VRBO and did not want to police the situation and look out for people who are not looking out for their own property rights.

Lisa Prue, 234 Lakeside Blvd., was one of the appellants. She discussed her history in the valley and with her property. She owned short-term rentals and was aware of the rules, which she discussed in detail. She was concerned about the road that was in front of the duplex. She explained that there was a safety issue with speeding traffic and was concerned for the safety of people coming down the hill.

PUBLIC COMMENT
8:55 PM

Kristen Omvig with Rocky Mountain Law Partners, P.C., 1830 3rd Ave E., Ste 301, was the attorney representing Sandra Fox, the owner/applicant of the C.U.P. for the short term rental. She explained that many of the people in the area, including some of the appellants, short-term rented their house out. She addressed conditions for the appeal in great detail. She said they were ambiguous. Change was inevitable particularly with the growth in the valley.

The aversion to change could not dictate the approval of the conditional use process.

Sandra Fox, *no address given*, was the owner of the applicant who received the C.U.P.. She discussed her history in Montana. She said that it was not prohibited by the CCandRs. She discussed the precautions that she had taken to not interfere with the neighbors. She personally vetted all renters. She discussed her process and rules that she has in place. She described, in great detail, the contention between her and her neighbors. She addressed the concerns of parking and using Lakeside Blvd. She said she was open to discussion of having the Wicks use the common area at a certain time of day. She was available for questions.

Klempel asked if she had ever given the Wicks the property management information. She said she had. Mrs. Wick interjected that she had called the company. She submitted pictures of what the neighbors had done to her property.

APPELLANT REBUTTAL
9:14 PM

Murray said the zoning regulations took the CCand Rs out of their jurisdiction. The issue of the case was site suitability and design of the area. It did not matter how great the renters were. Because it was shared property, the Wicks could not use the property because they did not know who was going to be using the amenities that they owned. That could be easily mitigated with people who lived there. Guests were going to want to use it a lot. If it was a stand alone house, it would be different matter. If they were unable to mitigate these issues, to the point that the board could say that there was no detrimental impact to the neighborhood, the C.U.P. could not be approved. He said the staff did not look at the issues as to how it was going to impact the people who had to share the common grounds.

Conner questioned who they were supposed to contact when there was a problem with the short-term rentals and how efficient it would be when things needed to be addressed right away.

Elaine Wicks wanted to clarify that Fox lived in Billings. When she called about an issue, she was greeted with contention by the property manager. She felt it was impossible to communicate with Fox.

STAFF REBUTTAL
9:24 PM

None

BOARD DISCUSSION
9:24 PM

Netteberg questioned if Wicks had a rental cabin and if it was rented out long term. Wick replied that they had one but it had not been rented out for over a year. Netteberg also asked how many people have owned the other side of the duplex and the Wicks replied 1 other person. Previously it had been owned and rented out long term. They replied the VRBO changed everything and they had lost their rights.

Netteberg concurred with what Dyck had said earlier about VRBOs.

Noble did not see much difference between this and the other two.

Klempel said that what she saw that differed was because it was the same structure but with shared a firewall/common wall. She had rentals and could attest to the fact that they did not take care of the property as a property owner would. She was looking at the reality of guests coming in and not being as concerned about the property. She saw the firewall and fire safety as a concern.

Liechti said the one that they heard previously also had a common/shared wall.

Dyck said he saw the negative impacts of the community and what was happening on the other side was severely impacting the other couple. He also saw the concern that the H.O.A. which only had two couples. It was different than the H.O.A. of the previous condos. He said the C.U.P. asked specifically if it will impact the neighboring area and this impacted it severely.

Liechti argued that allowing was a very strong word.

Dyck said there should have been a written agreement between both sides to address hours of use and schedule of time. Dyck said the county had to really rethink this and felt, because they have no way to mitigate this, it had a severe impact on the community. He could not allow this but was not sure how to walk through this.

Liechti asked if it was because they had a problem with the CCandRs. Dyck continued to discuss his concerns at great length and felt that if the appeal was upheld then it would force the people to relook at the situation.

Noble asked what the ramifications would be if the appeal was upheld. Mack explained they would no longer have a permit for a short-term rental. Liechti asked if there was any way that we can add conditions to the existing permit. They discussed protocol at length. If it was revoked upon appeal, it would be something that the county attorneys would have to address.

Dyck felt that, for everybody involved, it should be restricted to 6 people on site (not just staying there). He wanted to deny the C.U.P. because there was a lack of information to even approve it. He agreed with Klempel regarding the shared

wall. He said they were dealing with a commercial issue abutted to a residential property. He felt common sense was leading him in the direction of upholding the appeal.

They discussed the difference between this appeal and the ones previously heard at great length.

Netteberg felt it was too bad that the animosity was at the level it was.

Dyck was going to vote to uphold the appeal and that would give them 1 year to work out something that would work for both parties involved. He reiterated that the C.U.P. was a privilege and not a right; it had to work with the community.

**MOTION TO APPROVE
(APPEAL 21-04)
9:37 PM**

Dyck made a motion, seconded by Klempel, to approve APPEAL 21-04.

**ROLL CALL TO
APPROVE
(APPEAL 21-04)
9:37 PM**

Motion failed on a 2-3 vote. Noble, Netteberg, and Liechti dissented.

**OLD BUSINESS
9:40 PM**

Mack informed them that the work plan will be presented to the Planning Board tomorrow. Short term rentals will be a part of that.

**NEW BUSINESS
9:42 PM**

Mack introduced Landon Stevens who will be stepping into the Planner I roll. Mack updated the board on the staffing promotions and open positions within the planning department.

**ADJOURNMENT
9:43 PM**

The meeting was adjourned at approximately 9:43 pm on a motion by Netteberg. The next meeting will be held at 6:00 pm on November 2, 2021.

Cal Dyck, Chairman

Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED __/__/2021

DRAFT